

Plain Dealing

A policy and administrative bulletin for licensed dealers from the Dealer Section of the WisDOT Division of Motor Vehicles.

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“Nothing astonishes men so much as common sense and plain dealing.”

R. W. Emerson

We hope you continue to find *Plain Dealing* to be a useful source of information. We urge you to circulate each issue among your staff so they are all aware of policy and regulation updates. We also suggest that you keep each issue for future reference.

In this issue, we cover the changes to the Wisconsin Administrative Code Chapter Trans 138 including the definition of a dealer, shared facilities, consignment sales and going out of business. You'll also want to read the latest on Truth-in-Mileage implementation.

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Toyota certified for Lemon Law arbitration

Photo Not Available

DMV Administrator Roger Cross presents certificates to Glen Baker, Toyota Regional Service Manager; Joel Kean, AUTOSOLVE manager; and Mark Brown, General Manager of Madison's AAA.

Toyota is the first manufacturer to have its informal dispute settlement procedure certified under the high standards of Wisconsin's Lemon Law. Toyota has designated AUTOSOLVE, the complaint arbitration service of the American Automobile Association, as its third-party arbitrator.

Certification means our department is satisfied that Toyota and Lexus owners who qualify for relief under Wisconsin's Lemon Law will get a fair and fast decision on their complaints if they use the AUTOSOLVE program. In fact, because the program is certified, consumers must use the AUTOSOLVE program before they can file a lawsuit under the Lemon Law.

DMV Administrator Roger Cross presented certificates to Glen Baker, Toyota Regional Service Manager, and Joel Kean, Manager of the AUTOSOLVE program, May 15, 1991, during a brief ceremony at Hill Farms State Transportation Building in Madison. Administrator Cross complimented the high quality warranty materials and procedures developed by Toyota and AUTOSOLVE, saying, “We believe that their actions will benefit Wisconsin consumers, and we hope that other manufacturers show the same commitment to customer service by applying for and securing certification.”

Dealer Definition Rule Takes Effect

by Thomas L. Gais

If there's one thing that irks licensed dealers, it's that some people are in the business of selling motor vehicles without a license. Getting and maintaining a license can cost a lot in money, facilities, and record-keeping; and our trade practice requirements are probably the toughest in the nation. Many dealers say they're willing to bear these costs so long as everyone plays by the same rules. We understand and appreciate that viewpoint, and for that reason we've made enforcement against unlicensed dealers a top priority.

But who *is* a dealer? Most of us think we can recognize a dealer when we see one, though sometimes it's hard to tell. Businesses of all kinds buy and sell large fleets of vehicles, occasionally dwarfing the inventory of traditional dealers. Some auctioneers sell a lot of vehicles, ranging from old pickups in farm sales to big trucks and other equipment owned by construction firms. And then there's a great variety of businesses that get involved in some, though not all, aspects of vehicle sales, such as brokers, buying clubs, vehicle information directories, consignment dealers, financial institutions sponsoring vehicle sales events, or even travel agencies arranging vehicle purchases abroad.

The state has had to grapple with these questions since the dealer licensing laws were enacted in the 1930s, and the result has been a long history of cases and decisions on which businesses require a license. Unfortunately, these decisions weren't published anywhere, so over two years ago we decided to put them in the form of an "administrative rule." An administrative rule is an agency's detailed interpretations of the statutes it administers. The rule amended ch. Trans 138 of the Wisconsin Administrative Code, and it finally went into effect on July 1, 1991.

The rule includes several provisions concerning who is and who's not a dealer:

- A dealer includes any person compensated for selling, exchanging, or buying a motor vehicle, or for offering to provide any of these services. It doesn't matter whether the person owns the vehicles offered for sale, so the definition of a dealer includes consignment dealers and some retail auction companies. Also, leasing companies are dealers when their leases include an option to purchase.
- The department also considers brokers and some buying clubs to be dealers, since they're engaged in negotiating a sale or exchange of motor vehicles, which is part of the statutory definition of a dealer. That includes businesses or organizations that negotiate or enforce special prices, discounts, or other terms of sale in behalf of others.
- Businesses are not dealers when they simply provide advertising or other services aiding the sale of vehicles and get paid on a flat, fee-for-service basis. But they do require a license if they provide such services and are paid a commission or other fee that depends on whether a vehicle is sold. Examples include newspapers, listing services, and gas stations or other property owners who provide space for individuals to display their vehicles.
- In a new policy, leasing and rental companies are dealers when they sell their fleets at retail. Licensing rental and leasing companies protects consumers, not only because they sell so many vehicles, but also because their fleets are attractive and frequent targets for odometer tampering. To allow these companies a fair chance to get a license and comply with the law, the department is offering them a

grace period of five months, until December 1, 1991.

- To comply with federal vehicle disclosure regulations, the department also considers an individual to be a dealer when he or she sells more than 5 vehicles per year, even if the vehicles were used for private transportation.
- Businesses, on the other hand, may sell their fleets without a license if they used the vehicles for their transportation needs, and if they provide services or goods that *do not* involve the sale, lease, or rental of motor vehicles.
- Auction companies are not dealers when they sell vehicles in one-owner auctions, that is, auctions that only include vehicles owned by a single person, household, or business. The only exception is for small consignment auctions — those with no more than three vehicles, which are exempt even if more than one person's vehicles are involved. If the auction includes more than three vehicles, and those vehicles are owned by more than one person, then the auction company needs a license.

Defining a dealer isn't the only thing the rule does. It also states or clarifies several other policies:

- The rule prohibits retail dealers from using their residences as business offices.
- It prohibits vehicle consignments between wholesalers and retail dealers as well as between retail dealers.
- The rule clarifies and adds certain record-keeping requirements for consignment transactions.
- The rule also provides some guidelines for dealers sharing facilities.

Finally, the rule creates a new section describing the activities permitted dealers whose licenses are suspended, denied, revoked or voluntarily surrendered. The rule permits a currently licensed dealer whose renewal application is denied to request a hearing on the denial and continue to do business normally, pending the outcome of the hearing. It also allows a dealer whose license is suspended to continue to engage in businesses not regulated by the department and provides guidelines on separating the regulated and non-regulated parts of the business during the suspension.

The same section also creates a new procedure permitting a dealer whose license has been denied or revoked to sell off existing inventory. A dealer whose license is denied or revoked may be permitted up to 30 days to sell vehicles already in inventory to wholesale buyers. Similar guidelines are offered to dealers who voluntarily surrender their licenses to the department.

We appreciated the comments and suggestions of many dealers in developing this rule. We had good attendance at the public hearings and an excellent collection of written comments from dealers, rental companies, credit unions, and other businesses. If you have any questions about the rule, or if you'd like a copy of the revised version of ch. Trans 138, please write or call our Business Licensing Unit in the Dealer Section at (608) 266-1425.

News in Brief

New Phone Line for Dealer Questions

How many times have you called the DMV's telephone inquiry line and gotten a busy signal or been put on hold? When you need information, you need it now, so a special Dealer Inquiry phone number is ready to go as you read this.

**Dealer Inquiry
Call
(608)267-3646**

There are four incoming lines for this number. Staffing the line are people who can answer your questions on registration and titling, Truth in Mileage Act, and record searches. We ask that you not give this number to your customers — if the public starts using the special dealer number, you'll be hearing those busy signals again.

Brokers

After last issue's cover story about motor vehicle brokers needing dealer licenses, we've had contacts with several brokers, buying clubs and other unconventional businesses. In 1990, we asked the State Patrol to issue citations against Co-Share Wisconsin, Inc. for acting as a dealer without a license. Co-Share Wisconsin calls itself a fiduciary trust that purchases, holds title, and disposes of vehicles in behalf of participating consumers. We decided that Co-Share required a new vehicle dealer's license to operate legally, and so we denied their application to operate without a franchise.

Nonetheless, Co-Share continued to do business. We tried to stop them by having the citations issued, but the Milwaukee District Attorney's Office threw out the case after questioning the authority of the State Patrol. We're working on ways to deal with this company, but in the meantime, licensed dealers should exercise caution in any contacts with this company.

On a more positive note, two companies — the Wholesale Club/Auto Insider Service and Sam's Wholesale Club — have modified their buying club programs to make sure that they can operate legally in Wisconsin. Although we don't endorse these programs, they have sent us materials for review, and they've made changes that would allow them to avoid the need for a license, assuming they continue to use the contracts and advertisements we reviewed.

Our investigators found some evidence that AutoVantage of CUC International, Inc. — operating out of Texas and Connecticut — was either operating as a broker-dealer without a license or falsely indicating that it had agreements with several new vehicle dealers in Wisconsin. Any information you have concerning this program is welcome, as well as any information on other unlicensed activities.

Registration Fees Increase

Effective September 1, 1991, registration fees for most license plate types go up. The \$10 personalized plate fee also increases to \$15 annually. The new fees are charged when the date of first operation is September 1, or later. The new fees also apply to renewals for plates that expire at the end of September or later.

In addition to the fee changes, two weight options have been added to most gross weight vehicle registrations. Applicants may now register their gross weight vehicles at 10,000 or 54,000 pounds. The exceptions are that motor home categories haven't changed and farm trucks aren't eligible for the 10,000 pound category.

Our forms are being revised to show the new fees and weight categories and will be available soon. Information was recently mailed separately to dealers who will be affected by the fee and gross weight changes. If you have questions about this information, please call the new dealer inquiry line at (608) 267-3646.

Expanded Hours at Customer Service Centers

In response to customer requests for non-standard office hours, the Bureau of Field Services has expanded hours at several locations. The newest of these locations serves the La Crosse area from 9477 Highway 16 East in Onalaska. This Customer Service Center will handle vehicle registrations, driver licensing, driver exams and serve as the new District 3 headquarters formerly located in Tomah. The service center is open Monday, Wednesday and Friday from 8:45 a.m. - 5 p.m., and Tuesday and Thursday from 9:45 a.m. - 6 p.m.

The Madison East and Beaver Dam Customer Service Centers have expanded their hours to 10 a.m. - 6 p.m. Tuesdays and Thursdays, and 8:30 a.m. - 4:30 p.m. Mondays, Wednesdays and Fridays. The Customer Service Centers in Kenosha, Racine and Waukesha have all added a late service day with hours from 10:30 a.m. - 7 p.m. Kenosha's late service day is Wednesday, Racine's is Tuesday and Waukesha's is Thursday. The regular hours for these three centers are 8:45 a.m. - 5 p.m.

No Registration With Faulty Emission Equipment

Once a vehicle is identified as having "non-conforming" emission equipment, it can't be registered anywhere in the state until it passes an inspection following repairs. "Non-conforming" means equipment that is inoperable because of tampering or neglect. It includes catalytic converters damaged by using leaded gas.

Vehicles with faulty emission equipment are usually identified during annual emission inspections in southeastern Wisconsin. Once identified in the department's computer, no registration can be issued until the vehicle is repaired and passes an emission inspection. This will prevent people from evading the emission inspection law by registering non-conforming vehicles in counties outside the testing area.

Policy Briefings

Transporter Plate Use

Can a transporter plate be displayed on a van that is used to take the transport drivers to their vehicle pick-up point?

As a follow-up to last issue's article on dealer plate use, here's some information on transporter plate use. A distinction between transporter plates and dealer plates is the ownership of the vehicle. A vehicle displaying a dealer plate (or manufacturer or distributor plate) must be owned and offered for sale by the dealer (or manufacturer or distributor).

A transporter is defined as someone engaged in the business of transporting and delivering motor vehicles, trailers, semitrailers or mobile homes in tow on their own wheels or under their own power between manufacturers, distributors and dealers. A transporter can also be a final stage manufacturer or someone who modifies or converts complete motor vehicles, but doesn't own the vehicles, if transporting the vehicles between the person's place of business and manufacturers, distributors, dealers or purchasers is incidental to manufacturing operations.

In other words, if a business performs some kind of manufacturing or conversion on vehicles it doesn't own, it may use transporter plates to move the vehicles between its place of business and manufacturers, distributors, dealers or purchasers of the vehicles.

The answer to the question posed at the beginning of this article is **no, a transporter plate may not be used** to carry transport drivers to the vehicles they'll deliver — unless the vehicle they're riding in is itself being delivered to a manufacturer, distributor, dealer or purchaser after completion of a manufacturing or conversion process. A van that is owned by the business or regularly used to carry drivers to the vehicles they'll be delivering should be privately registered.

Transporter plates are issued annually with an expiration date of December 31. They cost \$75 for the first two (with a minimum order of two) and \$5 for each additional plate. If you have questions about transporter plates or would like an application to order them, please contact Dealer Section's Business Licensing Unit at (608) 266-1425.

More Dealer Plate Use Tips

Dealers should display dealer plates whenever a vehicle they own and are offering or will be offering for sale is operated on the highway.

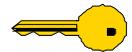
This includes vehicles that are being worked on at an auto body, detailer or rustproofing shop. If the vehicle hasn't been inspected for sale yet, a "not inspected for sale" sticker should be posted on it. If the vehicle has been inspected for sale, be sure the used vehicle disclosure label is readable from outside the vehicle. Used vehicle disclosure labels don't apply to wholesalers, nor are they required when going to or from an auction (or other wholesale transaction). Demonstrator and executive vehicles need not display a used vehicle disclosure label until they are removed from demonstrator or executive service.

If you bring vehicles to detailers or other businesses to have work done on them, one of your dealer plates is the appropriate plate to display while traveling to and from your dealership. You may also want to take some precautions to protect your plates:

- Use your own staff to drop off and pick up vehicles and have them take the plates with them.
- Ask businesses you're considering for detailing or body work for references from other dealers verifying proper plate use.
- Avoid releasing a plate overnight or over a weekend.
- Ask the detailer to return the plate to the dealership while the work is being done if the vehicle will be at the detailer's shop for several days.

If you need additional plates, they are available at a cost of \$10 each. To order, write the number of plates desired, business name, address and dealer license number on your letterhead. Include a check payable to Registration Fee Trust and mail to: Wisconsin Department of Transportation, Dealer Section, P.O. Box 7909, Madison, WI 53707-7909.

Vehicle Give-aways



Is a vehicle door prize or give-away in your plans? If so, here is how you handle the sales tax and paperwork:

Chapter 77 of the Wisconsin Statutes says the **donor** of the prize is subject to sales or use tax on the purchase price of the prize. If a motor vehicle dealer **donates** a motor vehicle that was purchased without tax, he or she must pay use tax on its purchase price — unless the vehicle is donated to a Wisconsin governmental unit or exempt charitable organization. If a motor vehicle dealer **sells** a vehicle to an organization that will donate the vehicle, the dealer is subject to sales tax on the selling price of the vehicle, unless the vehicle is sold to a Wisconsin governmental unit or exempt charitable organization. Be sure to write the certificate of exempt status (CES) number on the purchase contract and application for title whenever you sell a vehicle to an exempt charitable organization. To handle the paperwork:

- ◇ First complete an MV11 for the donor. Include the \$5 title fee, sales tax (or certificate of exempt status number) and indicate "double transfer" at the top of the form.
- ◇ Next, complete an MV1 for the winner. Include the \$5 title fee, registration fee (or plate number to transfer), indicate tax exempt status #9 (other) and write in "prize" as the explanation in the tax information section.
- ◇ Last, be sure to include a bill of sale to show the transfer from the donor to the winner.

For more information, or if you have questions about the procedure, contact the Department of Revenue, phone (608) 266-2776.

Truth-in-Mileage Update

Using the “Secure” Power of Attorney

There is only one situation where a dealer should accept a vehicle in trade that doesn't have a title — **when the lienholder holds the title**. The Wisconsin form that allows a dealer to complete the odometer statement for the seller is the MV2690, Secure Power of Attorney. To use this form:

1. When you get the vehicle:
 - The registered owners complete the MV2690 and give it to you.
 - You sign and complete the MV2690 and give a copy of the signed form to the registered owners.
2. When you get the title:
 - Complete the odometer disclosure using **exactly the same information** entered on the original MV2690 by the registered owners.
 - ▶ Complete the odometer disclosure on the title if it is a conforming title.
 - ▶ Complete a separate *conforming* odometer disclosure statement if the title is a non-conforming title.
 - Complete the certification on the MV2690 with signature, printed dealer name and address, and date of certification.
3. Return the **original** completed MV2690, power of attorney form, to the Wisconsin Division of Motor Vehicles:
 - For a retail sale or if titled in the dealership's name, send the **original** completed MV2690 form with the application for title.
 - When sold to another dealer or to a purchaser who will not apply for a Wisconsin title, send the **original** power of attorney and a **copy** (front and back) of the completed title to the following address:
Security Interest and Anti-Theft Unit
ATTN: Secure Power of Attorney File, Room 233
Box 7949
Madison, WI 53707-7949

In this case, give the purchaser **the dealer copy** of the completed MV2690 and the **original** completed title. The copy of the power of attorney accompanies the application for title. Keep a photocopy of the dealer copy of the MV2690 for your records.

Notify Lessees of Odometer Disclosure Requirements

If you lease vehicles to your customers, you should know that federal Truth-in-Mileage regulations require you to notify lessees that they must disclose the leased vehicle's true odometer reading at the end of the lease. You can notify the lessee of this requirement any time before the end of the lease, but we recommend that notice be given as early as possible. For example, you could make this notification at the start of the lease.

The notification requirement applies to current leases even if they were created before Truth-in-Mileage regulations went into effect. If you don't have evidence that the required notice was provided on an existing lease, you must be sure to notify the lessee before he or she turns in the vehicle. Forms designed specifically for notifying lessees of their odometer disclosure obligation are available from your regular supplier of odometer statements.

Handling “Conforming” Titles

Remember that when one of the new Wisconsin titles with space for five reassignments is involved in a transaction, all reassignments *must* be made on the title itself. The new titles were issued starting January 7, 1991, and are called “conforming” titles because they conform to federal regulations under the Truth-in-Mileage Act. A primary purpose of the Truth-in-Mileage Act is to have *all* reassignments of ownership and odometer disclosures done on a single, secure document. Attachments such as the reassignment form MV2115 should only be used with Wisconsin titles that were issued before January 7, 1991. However, retail reassignment between the dealer and purchaser may be made on form MV11.

Paperwork Pointers

☞ If you provide **temporary plates** as a service to your customers, be sure you also keep accurate records of which plate is sold to which customer. It is critical that law enforcement personnel are able to connect a temporary plate number to the person who bought it. The Wisconsin Administrative Code Chapter Trans 132.07 requires dealers to keep complete and accurate plate and receipt records “including a copy of each receipt issued to a vehicle purchaser, in numerical order by plate number.” Temporary plates may be ordered in groups of five at a cost of \$3 per plate by sending a written request including license number, dealership name, address and phone number to: Wisconsin Dept. of Transportation, Dealer Section, P.O. Box 7909, Madison, WI 53707-7909.

☞ Title and registration applications which include **Special Plate** requests should be separated from other applications and mailed to: Special Plates Unit, P.O. Box 7911, Madison, WI 53707-7911.

☞ **Personalized plates** can't be ordered through Fast Service Processing. If you have questions about personalized plates or special plates, call (608) 266-3041.

☞ Your **customers aren't allowed** to bring title/registration paperwork to DMV Customer Service Centers by themselves. If they need immediate processing, someone from the dealership must accompany them to the DMV counter. A \$2 counter service fee will be charged.

1991 Licensing Actions

AB Auto Sales, Milwaukee — Special Order issued to prevent dealer's brother, Mhomed Govani, from having any interest in the business. Govani's dealership, Nice Used Cars, went out of business in 1990 after he was charged with selling encumbered property.

Car King, West Allis — Special Order issued for submitting false title applications to conceal the identity of unlicensed dealers.

Countryside Auto Body, Menasha — Special Order issued for selling a vehicle to a second party while a binding purchase contract was in effect with another buyer.

Dave's Auto Sales, Prairie du Chien — License was suspended for 15 days and a Special Order was issued for improperly disclosing the condition of used vehicles, employing unlicensed salespersons, off-premise sale violations, failure to maintain required records and failure to submit title applications within 7 business days of sale.

Dobbe Motor Sales, Inc., Rosholt — License was revoked and Special Order was issued for entering into fraudulent sales transactions on dealer trades and failure to submit title applications within 7 business days of sale.

Edward's Salvage, Milwaukee — License was suspended for 60 days for failure to maintain required records.

Excalibur Automobile Corp. and Excalibur Marketing Corp., Milwaukee — Manufacturer and dealer licenses denied based on felony convictions for theft by fraud, vehicle identification number alteration and the negative net worth of the dealership.

KBS Company, Inc., Chippewa Falls — Special Order was issued for misrepresenting mileage as "not actual" on all vehicles offered for sale, failure to display used vehicle disclosure labels and failure to submit applications for title within 7 business days of sale. A civil forfeiture of \$1,000 was also imposed.

Lincoln Motors, West Allis — Special Order was issued for knowingly participating in falsifying MV1's to aid an unlicensed dealer.

Olympic Auto Sales, Milwaukee — Dealer license was denied following dealer's admission of helping drug dealers purchase cars in other people's names with drug profits.

Gerald Patterson, Milwaukee — Salesperson and Representative licenses denied based on his activity as vice president of Excalibur Marketing Corp.

Perron Motors, Centuria — Special Order issued for failure to enter vehicles in the log book, falsifying applications for title, improperly completing used vehicle disclosure labels, offering vehicles for sale without evidence of ownership, offering consignment vehicles for sale without consignment agreements, allowing an unlicensed salesperson to transact sales, and lending and renting dealership vehicles with prior owners' registration plates attached.

Pratt Salvage, Darlington — Salvage license denied after dealer principal plead guilty to possessing stolen vehicles.

Jerry Pritchard, Brookfield — Conditional salesperson licensed issued with Special Order prohibiting activities other than retail sales of vehicles on the employing dealer's premises.

Robert Sieracki, Milwaukee — Salesperson license suspended for 10 days for falsifying applications for title.

Suburban Motors, Black Earth — License was revoked and a Special Order was issued for failure to disclose vehicles bought back by the manufacturer because of defects ("lemons"), failure to disclose corrected damage in excess of 6% of the retail price of new vehicles, failure to conduct required inspections and failure to inform purchasers about existing factory warranties.

Suburban Wheels, Verona — License was suspended for 10 days and a Special Order was issued for failure to disclose manufacturer buybacks, failure to disclose damage to new vehicles, failure to conduct required inspections and failure to inform purchasers about existing warranties.

Suburban III, Verona — License was suspended for 3 days and a Special Order was issued for failure to disclose manufacturer buybacks, failure to disclose damage to new vehicles, failure to conduct required inspections, and failure to inform purchasers about existing warranties.

Wallie Motors of Ashland Inc., Ashland — Special Order was issued for violating off-premise sales regulations and allowing an unlicensed salesperson to transact sales.